

## New Trial Motion

1. File a timely notice (deadlines are jurisdictional)—usually 15 days from service of the first notice of entry of judgment. CCP § 659.
2. Beware **multiple notices** of entry of judgment! The 15-day period is triggered by the **earliest** one.
3. Read the court’s order to determine whether it is a judgment:
  - a. Does it merely grant the motion? If so, no judgment.
  - b. Or does it enter judgment for the defendant **or** dismiss all causes of action? A dismissal is a judgment. CCP § 581d.
4. Use the new trial motion to **complete the record**:
  - a. Attach excluded documentary evidence.
  - b. For any contested rulings that were not on the record, attach attorney declaration explaining yours and opposing counsel’s positions at trial, and the court’s ruling.
  - c. For any excluded expert testimony, include the expert’s declaration or attach excerpt of expert’s deposition.
5. Obtain a ruling within the jurisdictional 60-day statutory period—otherwise the motion is **denied by operation of law** after 60 days from service of the first notice of entry of judgment. CCP § 660.
  - a. On the first page of the notice, put the date that jurisdiction expires.
  - b. At the hearing and in a follow-up letter after the hearing, remind the court of its deadline to rule on the motion.
6. In the notice, include **all possibly applicable** grounds (CCP § 657) because the notice is jurisdictional (i.e. motion could not be granted by trial court or affirmed by court of appeal on grounds not included in your notice).
7. Assert any claim of inadequate damages in the new trial motion—or else it is waived on appeal.
8. When claiming juror misconduct or juror bias:
  - a. Put only admissible evidence in juror declarations (no “mental processes”; Evid. Code § 1150(a)).
  - b. Include attorney declaration to show attorney’s lack of prior knowledge of misconduct or bias and juror’s concealment of bias (attaching voir dire transcript).